



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,858	04/09/2004	Hideomi Idei	501.43751X00	8697

24956 7590 05/24/2006

MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C.
1800 DIAGONAL ROAD
SUITE 370
ALEXANDRIA, VA 22314

EXAMINER

BONZO, BRYCE P

ART UNIT PAPER NUMBER

2113

DATE MAILED: 05/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/820,858

Applicant(s)

IDEI ET AL.

Examiner

Bryce P. Bonzo

Art Unit

2113

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

NON FINAL OFFICIAL ACTION

Status of the Claims

Claims 1-11 are rejected under 35 USC §112, 2nd paragraph.

Claims 1, 2, 9 and 10 are rejected under 35 USC §102.

Rejections under 35 USC §112, 2nd paragraph

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

The Examiner has attempted to examine the application to the best of his abilities, determining what Applicant attempted to claim. The first clause beginning with wherein of claim 1, and its sister limitations in claims 9 and 11 require this rejection. The Examiner has interpreted these claims to describe a system wherein data is segregated in distinct groups, and transmits these groups to the second system and then transmitted to the second system.

Applicant REQUIRED to correct the language of these claims to bring them into line with proper English. Further, the farther the claims continue, matter which may be deemed allowable becomes muddled, as it becomes unclear which data is transmitted synchronously and asynchronously, and numerous antecedent basis errors. Applicant is advised that these errors PREVENT the Examiner from indicating which subject matter would otherwise allowable.

Rejections under 35 USC §102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 9 and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Kodama (United States Patent No. 6,728,849).

As per claim 1, Kodama discloses:

A computer system comprising:

a first site comprising a first computer and a first storage apparatus (Figure 1, items 22,20);

a second site comprising a second computer and a second storage apparatus (Figure 1, items 22' and 20');

a computer for management (column 7, lines 44-48); and

a network connecting the first site, the second site, and the computer for management to one another (Figure 9),

wherein the first storage apparatus subjects data (column 7, lines 38-42), which are stored in storage areas included in the storage apparatus (column 4, lines 13-30), to grouping on the basis of information inputted to the computer for management (column 7, lines 49 through column 8, lines 6) and, by a unit of a group obtained by the grouping, transfers data updated in the group to the second storage apparatus (column 8, lines 23-59), and

wherein, if the first site is stopped, recovers the data by a unit of the group the second site (column 8, lines 7-14).

As per claim 2, Kodama discloses:

A computer system according to claim 1, wherein the first storage apparatus performs the grouping by giving priorities to the data on the basis of a recovery time required in recovering the data in the second site (column 11, lines 36-41), and

site recovers the data included in the groups obtained by the grouping in an order of priorities wherein the second (column 11, lines 36-42).

Art Unit: 2113

Claims 9 and 10 are the apparatus implementations of claims 1 and 2 and are rejected on the same grounds.

Allowable Subject Matter

As described earlier, Applicant's failure to place the claims in clear, intelligible English has prevented the Examiner from indicating allowable matter. However, the Examiner suggests that Applicant, when drafting new claim language to overcome the rejections under 35 USC §112, 2nd, include language clearly describing the contents of the different data groups, specifically that one group contains vital data base log data, and which groups are sent synchronously and asynchronously, with falling into an antecedent basis problem.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryce P. Bonzo whose telephone number is (571)272-3655. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (571)272-3645. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free):


Bryce P Bonzo
Primary Examiner
Art Unit 2113